

REMARKS

Claims 1, 19, 28 and 32 have been amended. Claims 35-47 have been added. Therefore, claims 1-47 are now pending in the application.

Section 103(a) Rejection:

The Office Action rejected claims 1, 2, 8, 17-20, 22 and 30-34 under 35 U.S.C. § 103(a) as being unpatentable over Yuan et al. (U.S. Patent 6,567,378) (hereinafter “Yuan”) in view of Lazraq et al. (U.S. Patent 6,330,435) (hereinafter “Lazraq”). Applicant traverses this rejection in light of the following remarks.

As the Examiner has already stated, Yuan does not teach the conveying of a second packet in response to detecting a fault in the network. The Examiner relies on Lazraq in regard to this aspect of claim 1. However, Lazraq only teaches including the sequence numbers of dropped cells in a data packet discard notification (DPDN) message. Yuan in view of Lazraq therefore fails to teach conveying said second packet wherein said second packet includes route information for said first packet as cited in Applicant’s claims 1, 19, and 32. The packet discard notification messages in Lazraq do not include any route information for the first packet.

In regard to claims 8 and 22, Examiner states that Lazraq teaches “conveying a third packet to said first device in response to receiving said second packet.” Applicant disagrees with Examiner’s interpretation of Lazraq. Figure 7 of Lazraq shows that a retransmission request occurs on when a receiver has not received a data packet discard notification (Figure 7, steps 710, 716, and 720). Lazraq makes this clear in column 4, lines 1-9, where if a received message is a DPDN, the receiver only calculates and discards those cells specified in the DPDN. Applicant asserts that the retransmission request in Lazraq claim 12 is in response to not receiving a DPDN as stated in Lazraq column 4, lines 10 – 35. Thus, Lazraq teaches away from what is recited in claim 8.

In regard to claim 17, Applicant disagrees with Examiner's statement that Lazraq teaches the dropping of cells due to congestion. Applicant asserts that Lazraq only teaches the dropping of cells which are "obsolete or otherwise superfluous" (Lazraq column 1, lines 40-42). Applicant can find no teaching or suggestion in Lazraq regarding dropping of cells in response to detecting congestion as in claim 17.

In regard to claim 31, similar arguments to those above regarding claim 17 apply.

In regard to claims 18 and 31, the Examiner takes official notice that "congestion is only one of the many reasons why discard packet notification messages are sent" and that "[o]ther adverse conditions may include corruption of data based upon a CRC or a path failure, which may lead to congestion." Pursuant to M.P.E.P. § 2144.03, Applicant traverses the Examiner's taking of official notice. Applicant asserts that it was not well known in the prior art that congestion is only one of the many reasons why discard packet notification messages are sent and that other adverse conditions may include corruption of data based upon a CRC or a path failure, which may lead to congestion. In fact, as discussed above, Lazraq does not even teach congestion as a reason to send discard packet notification messages. Pursuant to M.P.E.P. § 2144.03 Applicant asserts that "the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See also 37 CFR 1.104(c)(2), (d)(2) and *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001).

Allowable Subject Matter:

Claims 3-7, 9-16, 21 and 23-29 were objected to as being dependent upon a rejected base claim but otherwise allowable if rewritten in independent form. The Examiner states, however, that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 3, 4, 6, 9, 12, 15, 21, 23, and 28 have been rewritten in independent form and added as new claims 35, 36, 38, 44, 45, 46, 40, 41, and 47 respectively. These new claims include all limitations of the original base claim and any of the original intervening claims. Therefore, added claims 35-47 should be in condition for allowance.

CONCLUSION

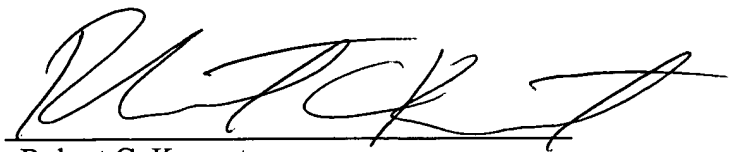
Applicant submits the application is in condition for allowance, and notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-55000/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$
for fees ().
- ☐ Other:

Respectfully submitted,



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